



STATE OF MISSOURI  
OFFICE OF SECRETARY OF STATE

IN THE MATTER OF:	)	
	)	
NOVAK & POWELL FINANCIAL	)	
SERVICES, INC., CRD No. 112970	)	
	)	
and	)	
	)	
DAVID NOVAK, CRD No. 2811131,	)	
	)	Case No. AP-14-13
<i>Respondents.</i>	)	
	)	
Serve: Novak & Powell Financial Services, Inc.	)	
c/o David B. Cosgrove	)	
Cosgrove Law Group, LLC	)	
8021 Forsyth Blvd.	)	
St. Louis, Missouri 63105	)	
	)	
Serve: David Novak	)	
c/o David B. Cosgrove	)	
Cosgrove Law Group, LLC	)	
8021 Forsyth Blvd.	)	
St. Louis, Missouri 63105	)	

**CONSENT ORDER**

**SUMMARY OF THE SECURITIES DIVISION’S ALLEGATIONS**

1. The Missouri Securities Division alleges that, for 10 months, David Novak transacted business in Missouri as an unregistered investment adviser representative, violating Section 409.4-404(a), RSMo (Cum. Supp. 2013).<sup>1</sup>
2. The Securities Division also alleges that, during that same period, Novak & Powell Financial Services, Inc. employed or associated with Novak while Novak transacted

<sup>1</sup> Unless otherwise noted, all statutory references are to the 2013 cumulative supplement to the Revised Statutes of Missouri.

business in Missouri as an unregistered investment adviser, violating Section 409.4-404(d).

3. Respondents and the Securities Division seek to settle the Division's allegations.

#### CONSENT TO JURISDICTION

4. Respondents stipulate that the Missouri Commissioner of Securities ("Commissioner") has jurisdiction over Respondents and these matters pursuant to the Missouri Securities Act of 2003, Chapter 409.
5. Respondents stipulate that the Commissioner has authority to enter this consent order pursuant to Section 409.6-604(h), which says that "[t]he commissioner is authorized to issue administrative consent orders in the settlement of any proceeding in the public interest under this act."

#### WAIVER AND EXCEPTION

6. Respondents waive their rights to a hearing with respect to this matter.
7. Respondents waive any rights that they may have to seek judicial review or otherwise challenge or contest the terms and conditions of this consent order. Respondents specifically forever release and hold harmless the Missouri office of Secretary of State, the Secretary of State, the Commissioner, and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter.
8. Respondents stipulate that, should the facts contained herein prove to be false or incomplete, the Commissioner reserves the right to pursue any and all legal or administrative remedies at the Commissioner's disposal.

#### CONSENT TO COMMISSIONER'S ORDER

9. Respondents stipulate to the issuance of this consent order without further proceedings in this matter, agreeing to be fully bound by the terms and conditions specified herein.
10. Respondents agree not to take any action or to make or permit to be made any public statement creating the impression that this consent order is without factual basis. Nothing in this paragraph affects Respondents' (a) testimonial obligations; (b) right to take contrary legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commissioner is not a party; or (c) right to make public statements that are factual.
11. Respondents agree that Respondents are not the prevailing party in this action since the parties have reached a good faith settlement.

12. Respondents neither admit nor deny the Securities Division's allegations, but consent to the Commissioner's findings of fact, conclusions of law, and order as set forth below solely for the purposes of resolving this proceeding and any proceeding that may be brought to enforce the terms of this consent order.

COMMISSIONER'S FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER

I. FINDINGS OF FACT

13. Respondent Novak & Powell is a Colorado-registered investment adviser with a mailing address of 1942 Broadway, Suite 314, Boulder, Colorado 80302. Novak & Powell is registered with the Central Registration Depository System ("CRD") with number 112970.
14. Respondent David Novak is a principal of Novak & Powell and one of its registered investment adviser representatives. Novak's mailing address is 1942 Broadway, Suite 314, Boulder, Colorado 80302. Novak's CRD number is 2811131.
15. On or about June 2, 2014, Novak & Powell sent to the Securities Division its application to register as an investment adviser in Missouri, as well as the accompanying fees and documentation to register David Novak as its investment adviser representative in Missouri.
16. In the cover letter to its application, Novak & Powell informed the Securities Division that, since September 2013, David Novak had been mistakenly transacting business in Missouri as an unregistered investment adviser representative on behalf of Novak & Powell.

II. CONCLUSIONS OF LAW

17. The Commissioner concludes that Respondent David Novak violated Section 409.4-404(a) by transacting business as an unregistered investment adviser in this state since September 2013, and that this conduct constitutes unlawful conduct under Section 409.6-604.
18. The Commissioner also concludes that Respondent Novak & Powell violated Section 409.4-404(d) when, during the same period noted above, it associated with or employed an unregistered investment adviser representative who transacted business in this state on behalf of Novak & Powell, and that this conduct constitutes unlawful conduct under Section 409.6-604.
19. The Commissioner, after considering Respondents' above stipulations and consent, finds and concludes that the Commissioner has jurisdiction over Respondents in this matter and that the following order is in the public interest, necessary for the protection of public investors, and consistent with the purposes intended by Chapter 409, RSMo.

### III. ORDER

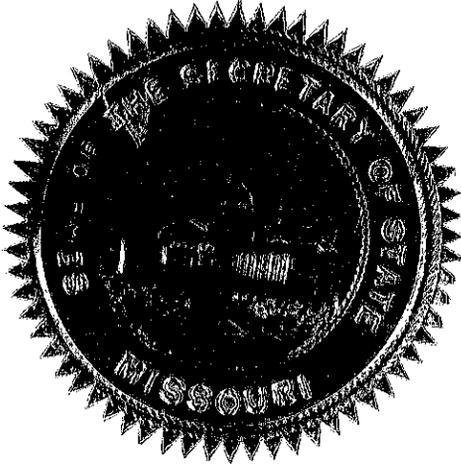
**NOW, THEREFORE**, it is hereby ordered that:

1. Respondents, their agents, employees and servants, and all other persons participating in the above-described violations with knowledge of this order are permanently enjoined and restrained from violating Section 409.4-404(a) and Section 409.4-404(d);
2. Respondents Novak & Powell and David Novak shall pay, jointly and severally, \$10,000 to the Investor Education and Protection Fund;
3. Within 30 days from the date of this consent order, Respondents shall send or deliver \$7,500 of the above amount to the Securities Division at 600 W. Main Street, Jefferson City, Missouri 65101. This \$7,500 payment shall be payable to the Missouri Secretary of State's Investor Education and Protection Fund. The Division will forward Respondents' payment to the Investor Education and Protection Fund;
4. The Commissioner suspends Respondents' payment of the remaining \$2,500 provided that, within two years from the date of this consent order, (1) Respondent David Novak is not found, after notice and opportunity for a hearing, to have violated Section 409.4-404(a) in the State of Missouri; *and* (2) Respondent Novak & Powell is not found, after notice and opportunity for a hearing, to have violated Section 409.4-404(d) in the State of Missouri;
5. If, after two years from the date of this consent order, Respondents David Novak and Novak & Powell have not been found, after notice and opportunity for a hearing, to have violated Sections 409.4-404(a) or 409.4-404(d) respectively, then the remaining \$2,500 payment is permanently waived by the Commissioner;
6. If, within two years from the date of this consent order, Respondents David Novak and Novak & Powell are found, after notice and opportunity for a hearing, to have violated Sections 409.4-404(a) or 409.4-404(d) respectively, then the suspended \$2,500 payment shall be immediately payable under the terms in paragraph 3 of this section, and the Commissioner will be able to take all available enforcement actions to enforce this consent order; and
7. Respondents shall pay their own costs and attorneys' fees with respect to this matter.

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**SO ORDERED:**

WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY,  
MISSOURI THIS 22 DAY OF JULY, 2014.



JASON KANDER  
SECRETARY OF STATE

*Andrew M. Hartnett*

ANDREW M. HARTNETT  
COMMISSIONER OF SECURITIES

RESPONDENT NOVAK & POWELL  
FINANCIAL SERVICES, INC.

and

RESPONDENT DAVID NOVAK

Approved as to Form:

*David B. Cosgrove*

David B. Cosgrove  
Cosgrove Law Group, LLC  
8021 Forsyth Blvd.  
St. Louis, Missouri 63105  
ATTORNEY FOR NOVAK & POWELL  
FINANCIAL SERVICES, INC. AND  
DAVID NOVAK